

**MINUTES OF THE MEETING OF THE
ROWAN COUNTY BOARD OF COMMISSIONERS**

April 2, 2012 – 3:00 PM

J. NEWTON COHEN, SR. ROOM

J. NEWTON COHEN, SR. ROWAN COUNTY ADMINISTRATION BUILDING
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Present: Chad Mitchell, Chairman
Carl Ford, Vice-Chairman
Jon Barber, Member
Raymond Coltrain, Member
Jim Sides, Member

County Manager Gary Page, Clerk to the Board Carolyn Athey, County Attorney Jay Dees and Finance Director Leslie Heidrick were present.

Chairman Mitchell convened the meeting at 3:00 pm.

Commissioner Sides provided the Invocation and also led the Pledge of Allegiance.

CONSIDER APPROVAL OF THE MINUTES

Commissioner Barber moved, Commissioner Coltrain seconded and the vote to approve the minutes of the March 19, 2012 Commission Meeting passed unanimously.

CONSIDER ADDITIONS TO THE AGENDA

There were no additions to the agenda.

CONSIDER DELETIONS FROM THE AGENDA

There were no deletions from the agenda.

CONSIDER APPROVAL OF THE AGENDA

Commissioner Ford moved, Commissioner Barber seconded and the vote to approve the agenda passed unanimously.

1. CONSIDER APPROVAL OF CONSENT AGENDA

Commissioner Barber moved approval of the Consent Agenda. The motion was seconded by Commissioner Ford and passed unanimously.

The Consent Agenda consisted of the following:

- A. Set Public Hearing for April 16, 2012 for NC Catalyst Program Application by Grateful Heart Ministries
- B. Authorization for County Manager to Sign Planning and Zoning Services Contract Between Town of China Grove and Rowan County
- C. Approval to Purchase Ambulance for the Emergency Services Department
- D. Proclamation for Child Abuse Prevention Month
- E. Pyrotechnics Displays at Fieldcrest Cannon Stadium for 2012 Season

2. PUBLIC COMMENT PERIOD

Chairman Mitchell opened the Public Comment Period to entertain comments from any citizens wishing to address the Board. The following individuals came forward:

- Robert Allen Voelker offered a suggested prayer as a solution to the Board members opening Commission Meetings with sectarian prayer.
- Betty Wallace supported the Board continuing to open meetings with sectarian prayer.
- Gwendolyn Eagle supported the Board continuing to open meetings with sectarian prayer.
- David Post felt the issue of prayer was more about following the "law".
- Al Drye supported the Board continuing to open meetings with sectarian prayer.
- Jerry Gentry supported the Board continuing to open meetings with sectarian prayer.

With no one else wishing to address the Board, Chairman Mitchell closed the Public Comment Period.

3. PUBLIC HEARING FOR Z 01-12

Senior Planner Shane Stewart provided a power point presentation and the Staff Report for Z 01-12. Mr. Stewart said James and Cora Bame constructed a 3,051 square foot stick-built home in 1963 addressed as 220 Barber Junction Road. Mr. Stewart said based on the surrounding uses being industrial/commercial, this property was identified as Industrial (IND) during the countywide rezoning process in the late 1990's.

Using the power point presentation, Mr. Stewart showed the property as well as the surrounding area.

Mr. Stewart reported that conversations with the Bame family at the beginning of February 2012 expressed a desire to rezone their 4.63 acre parcel to a residential zoning district after encountering complications when attempting to re-finance their home. According to the Bame family, their mortgage company would not consider the request based on the property being located within a non-residential zoning district.

Mr. Stewart said the Bame's were requesting rezoning of their 4.63 acre parcel located at 220 Barber Junction Road, referenced as Tax Parcel 270A-052 from IND to Rural Residential (RR). Since this parcel would not join other RR zoned property, Planning Staff contacted Clyde Graham, owner of two (2) lots across the road at 217 Barber Junction Road, also zoned IND to gauge interest in joining the application. Mr. Graham agreed to the rezoning of Tax Parcels 270A-066 and 080 totaling 1.57 acres to RR, which would make the Bame request contiguous to the RR district.

Mr. Stewart reviewed the Zoning Criteria listed in the Staff Report.

Mr. Stewart said since the requested joined a surrounding RR zone, a statement of reasonableness might not be necessary but was recommended by Planning Staff based on the configuration of the new district. Additionally, the Board should develop a statement of consistency.

Mr. Stewart said the Planning Board voted unanimously to recommend approval subject to the following:

Statement of Reasonableness

1. The request appears to be in keeping with the zoning district's purpose and intent.
2. The request is compatible with permitted uses in the zoning district as well as other nearby properties.
3. The request will not increase traffic, noise and will not impact schools. Adequate utilities are in place.

Statement of Consistency

1. While the Industrial Zoning District may appear to be the most appropriate use for this property, the county zoning ordinance does allow RR zoning in that area which could possibly serve as a "placeholder district" should development and conditions change in the area.
2. Other RR properties are adjacent to this property.

Chairman Mitchell opened the public hearing to receive citizen input regarding the requested rezoning.

With no one wishing to address the Board, Chairman Mitchell closed the public hearing.

Commissioner Sides moved to adopt the Statements of Reasonableness and Consistency as recommended by the Planning Board. The motion was seconded by Commissioner Barber and passed unanimously.

Commissioner Barber moved approval of Z 01-12. The motion was seconded by Commissioner Coltrain and passed unanimously.

4. SECOND CONSIDERATION OF FIRE PREVENTION AND PROTECTION ORDINANCE

Planning and Development Director Ed Muire said since the Fire Prevention Ordinance (FPO) 01-11 did not receive unanimous approval by the Board on February 20, 2012, the Board must consider FPO 01-11 a second time.

Commissioner Coltrain said the Board had discussed the issue at length and he then moved to approve FPO 01-11. The motion was seconded by Commissioner Barber.

Commissioner Sides said he had numerous questions and he asked Fire Marshal Tom Murphy to come forward.

Mr. Murphy confirmed to Commissioner Sides that he was the Fire Marshal for Rowan County and had two (2) fulltime employees under his supervision. Mr. Murphy also confirmed he had served as the County's Fire Marshal since January 2007.

Commissioner Sides repeated Mr. Murphy's comments from the Board meeting on February 20, 2012. Commissioner Sides said he had also received information from Mr. Murphy after the meeting, which listed 981 businesses in Rowan County that Mr. Murphy's office was responsible for inspecting.

Commissioner Sides said Mr. Murphy had stated on February 20, 2012 that more than thirty percent of those businesses were noncompliant with North Carolina Fire Code after an initial visit and two (2) follow-up visits. Mr. Murphy responded, "Well, after the initial visit, and then a second, and then maybe run across a third one periodically".

Commissioner Sides said Mr. Murphy had stated that thirty percent of the businesses in Rowan County had been visited three (3) times and that if the proposed ordinance was in effect, thirty percent of the businesses in Rowan County would be fined. Mr. Murphy said he did not think he had stated all the businesses had been visited three (3) times. Commissioner Sides then asked staff to play the video from February 20, 2012 with Mr. Murphy's comments.

Commissioner Sides referred to an email request he had sent to Mr. Murphy after the February 20, 2012 meeting. The request was for a list of all businesses in

the County for which Mr. Murphy's office was responsible for inspecting, a list of the thirty percent of those businesses that were noncompliant based on three (3) inspections, a copy of the three (3) inspection forms for each of the noncompliant businesses and providing the date of the inspection, as well as the violation and the severity of the violation.

Commissioner Sides said at no time did Mr. Murphy indicate there was any misunderstanding regarding the question he asked and the answer Mr. Murphy provided. Commissioner Sides said the question he asked "Was there thirty percent of the businesses in noncompliance after three (3) visits"? Commissioner Sides said Mr. Murphy had stated yes, with minor violations.

Commissioner Sides discussed the notebook of information provided to him by Mr. Murphy, which contained detailed inspection reports for all the businesses Mr. Murphy indicated were noncompliant after three (3) visits. Commissioner Sides said there were 309 visits noted in the notebook.

Commissioner Sides asked Mr. Murphy if his office had visited all 981 businesses in Rowan County and Mr. Murphy said yes.

Commissioner Sides said of the 309 businesses, only 16 were visited twice and only 2 had been visited three (3) times.

Commissioner Sides discussed the inspection process, which he stated "was supposed to be a safety issue." Commissioner Sides said Mr. Murphy had stated that if a hazardous or an unsafe condition was found it was required to be corrected immediately upon a first visit. Mr. Murphy confirmed this to be true for major violations.

Commissioner Sides said Mr. Murphy had used blocked exits as an example of what his office would consider to be a major violation. Commissioner Sides said there were more than six (6) entries in the notebook where exits were blocked and needed to be corrected. Commissioner Sides said only one (1) visit was made to those businesses and the reports indicated the blocked exits were still an open violation.

Commissioner Sides discussed several businesses with violations that Mr. Murphy agreed were considered as major violations. Commissioner Sides specifically discussed major violations found at Boral Brick in 2009 that were still open and had received no secondary visits. Commissioner Sides felt it interesting to note the ordinance was being promoted as a safety measure when there were existing conditions with no second visit.

Commissioner Sides said he would assume in the official capacity as Fire Marshal for Rowan County, the visits that found major violations, should certainly

be scheduled for a second visit before scheduling a second visit to a business found in compliance.

Commissioner Sides read from an inspection report that noted a major fire hazard on May 8, 2009, and pointed out there had been no second inspection.

Commissioner Sides said he had provided nothing less than facts and figures from the information given to him by the Fire Marshal's Office. Commissioner Sides described the information the Board had received from the Fire Marshal's Office as unsubstantiated claims of a need for a new fire ordinance. Commissioner Sides said the Board was provided with false and misleading information and statistics related to the operation of the Fire Marshal's Office. Commissioner Sides said there was a pattern of neglect and direct dereliction of duty in performance of the job the Fire Marshal was hired to perform.

Commissioner Sides said votes to approve the ordinance would be made knowing the information had been proven to be false and misleading. Commissioner Sides said votes to approve would be made in knowing that a senior member of county staff appeared before the Board and testified to the accuracy of information he knew to be false. Commissioner Sides said only after he requested the information was it determined what Mr. Murphy had told the Board was not so. Commissioner Sides personally called for the immediate resignation of Fire Marshal Tom Murphy on the grounds of presenting false and misleading information to the Board and based on his consistent history of dereliction of duty. Commissioner Sides said if Mr. Murphy did not resign, he should be terminated.

Commissioner Barber said he did not interpret Mr. Murphy's comments from the February 20, 2012 meeting the same way as Commissioner Sides did. Commissioner Barber said Mr. Murphy and his staff did a commendable job with enforcement of the current ordinance in place. Commissioner Barber said the process was designed to help the Fire Marshal's Office do a better job and be more consistent with other Fire Marshal Offices. Commissioner Barber felt the Board's role was establishing policy for county government. Commissioner Barber did not feel an employee should be asked to either resign or be terminated in a public setting; he was of the opinion the matter could be viewed as fostering a hostile environment. Commissioner Barber said he would support passage of the ordinance.

Commissioner Coltrain said Mr. Murphy had been too lenient on businesses in trying to do his job. Commissioner Coltrain said the ordinance would provide Mr. Murphy the tools he needed to do his job more fairly. Commissioner Coltrain said he did not interpret Mr. Murphy's comments on February 20, 2012 in the same manner as Commissioner Sides.

Commissioner Ford said he would vote against the ordinance due to the fact that it was already North Carolina law. Commissioner Ford said he did not wish to add new fines in the current economy. Commissioner Ford said if the issue was about serious threats to public safety, the County should use the tools already in place.

Chairman Mitchell said the only change would be the addition of a fine instead of a misdemeanor criminal penalty. Chairman Mitchell disagreed with the idea that it was better to charge someone with a misdemeanor when they could be fined instead. Chairman Mitchell said he did not know if the Fire Marshal would have handled the instances referred to by Commissioner Sides any differently if the proposed ordinance was in place. Chairman Mitchell said the ordinance was not adding additional rules/regulations; however, it would add a layer of enforcement that would be easier on the individual business or citizen than what was currently in place. Chairman Mitchell said the Fire Marshal would have a tool “in the middle” instead of charging someone with a criminal offense.

Commissioner Sides said the Planning Board submitted an 8-2 unfavorable recommendation for the ordinance. Commissioner Sides said the Planning Board made its decision with less information than he had provided. Commissioner Sides said the Fire Marshal, like any other in the state, had at his disposal all the tools necessary to do his job. Commissioner Sides said he did not agree that the ordinance would provide more tools for the Fire Marshal when there was a proven record that the Fire Marshal had not used what was available. Commissioner Sides said there were serious violations that had not received a second visit in almost three (3) years.

Commissioner Barber said there were two (2) Planning Board members present that told him they were “instructed to actually kill the ordinance; to never vote it out to be brought back before us”. Commissioner Barber said somewhere along the way there was influence being applied. Commissioner Barber said he heard those comments from the two (2) Planning Board members in the audience.

Commissioner Sides said what Commissioner Barber was presenting was conjectured and he stated that one (1) of the Planning Board members should be brought forward to prove there was undue influence.

Commissioner Coltrain called the question.

Upon being put to a vote, the motion on the floor passed 3-2 with Commissioners Ford and Sides dissenting.

5. DISCUSSION REGARDING RESCUE SQUAD FUNDING

Chairman Mitchell explained that during regular session on March 19, 2012, Commissioner Sides requested that the Board defer the scheduled April 6, 2012 payment to the Rescue Squad (Squad) until Commissioner Sides could

determine whether all the information he had requested was received in accordance with the County's Funding Policy.

Commissioner Sides reported that as of 6:30 p.m. on Friday, March 30, 2012, he had received all the information requested from the Rescue Squad.

Commissioner Sides moved to reinstate the Rescue Squad's quarterly payment. The motion was seconded by Commissioner Coltrain and passed unanimously.

6. CONSIDER APPROVAL OF BUDGET AMENDMENTS

Finance Director Leslie Heidrick presented the following budget amendments for the Board's consideration:

- Emergency Services – Appropriate funds received from insurance settlement of Fire Division vehicle involved in accident allowing ordering of replacement vehicle - \$30,000
- Health – Smart Start budget reduction for FY 2011-12. Child Care Health Consultant decreased \$15,063. Health Beginnings decreased \$6,772 and Health Link Program decreased \$14,203. (\$36,038)

Commissioner Coltrain moved approval of the budget amendments as presented. The motion was seconded by Commissioner Barber and passed unanimously.

7. CONSIDER APPROVAL OF BOARD APPOINTMENTS **ROWAN COUNTY ZONING BOARD OF ADJUSTMENT**

There are two (2) vacancies and the following application was submitted:

- Patricia Gilbert for reappointment

The term would be for three (3) years beginning April 1, 2012 and expiring March 31, 2015.

Commissioner Coltrain nominated Patricia Gilbert and the nomination passed unanimously.

CENTRALINA WORKFORCE DEVELOPMENT BOARD

Stanley Wilson submitted an application for consideration as the Rowan County community based organization representative.

The appointment would fill the unexpired term of Elizabeth Fields, beginning April 1, 2012 and expiring June 30, 2013.

Commissioner Barber nominated Stanley Wilson and the nomination carried unanimously.

ROWAN COUNTY JUVENILE CRIME PREVENTION COUNCIL

As stated in NCGS §143B-846, the director of the county department of social services, or that person's designee, should serve on the JCPC.

- Wendy Baskins submitted an application for consideration as the designee for the Director of the Department of Social Services

Commissioner Ford nominated Wendy Baskins and the nomination passed unanimously.

GRANITE QUARRY ZONING BOARD OF ADJUSTMENT

There are two (2) vacancies and the following applications were submitted for reappointment:

- Don Livengood
- Kelly Smith

The terms would be for three (3) years expiring December 31, 2014.

Commissioner Barber nominated Don Livengood and Kelly Smith for reappointment and the nominations carried unanimously.

ROWAN – IREDELL VFD FIRE COMMISSIONER

There is one (1) vacancy and the following applications were submitted:

- Gail Sharpe
- Ashley Webb

The term would be for two (2) years beginning May 1, 2012 and expiring April 30, 2014.

Commissioner Ford nominated Gail Sharpe and the nomination passed unanimously.

FRANKLIN VFD

There are three (3) vacancies and the following applications were submitted:

- Mark Monroe
- Raymond Mark Sokolowski
- Thomas Eugene Grubb for reappointment

The terms would be for two (2) years beginning May 1, 2012 and expiring April 30, 2014.

Commissioner Barber nominated Mark Monroe, Mark Sokolowski and Thomas Grubb. The nominations passed unanimously.

8. CLOSED SESSION

Commissioner Ford moved that the Board enter Closed Session at 3:52 p.m. pursuant to North Carolina General Statute § 143-318.11(a)(6) for personnel

matters and North Carolina General Statute § 143-318-11(a)(4) for economic development. The motion was seconded by Commissioner Coltrain and passed unanimously.

The Board returned to Open Session at 4:39 p.m. No action was taken.

9. ADJOURNMENT

There being no further business to come before the Board, Commissioner Sides moved to adjourn at 4:39 p.m. The motion was seconded by Commissioner Coltrain and passed unanimously.

Respectfully Submitted,

Carolyn Athey, CMC, NCCCC
Clerk to the Board/
Assistant to the County Manager